IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION

NO. 5:13-HC-2029-FL

JOHN H. BANKS,)	
)	
Petitioner,)	
)	
V.)	ORDER
)	
UNITED STATES OF AMERICA,)	
UNITED STATES PAROLE)	
COMMISSION, and BRICK TRIPP,)	
)	
Respondents.)	

Petitioner petitions this court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The matter is before the court on respondents' motion to dismiss (DE 9). The matter also is before the court on petitioner's unopposed motion for an extension of time to respond to respondent's motion to dismiss (DE 12) and motion to withdraw (DE 14). In this posture, the issues raised are ripe for adjudication.

Petitioner's pleading captioned "motion to withdraw summary of judgment without prejudice" states that he "would like the record to reflect the withdrawing of his writ of habeas corpus, in a summary of judgment, according to Rule 56(c), without prejudice." See (DE 14). The court construes petitioner's request as a motion for voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A).

An action may be dismissed voluntarily by petitioner without order of the court by filing a notice of dismissal at any time before service by the adverse party of an answer or a motion for summary judgment. See Fed. R.Civ. P. 41(a)(1). Otherwise an action shall not be dismissed on the

petitioner's request except upon an order of the court. <u>See</u> Fed. R.Civ. P. 41(a)(2). At this point, respondent has not filed an answer or motion for summary judgment. Based upon the foregoing, petitioner's motion for voluntary dismissal (DE 14) is GRANTED, and the action is DISMISSED without prejudice. All pending motions are DENIED as moot. The Clerk of Court is DIRECTED to close this case.

SO ORDERED, this the 5th day of March, 2014.

Howir W. Lloragan LOUISE W. FLANAGAN

United States District Judge